IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 715 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

==========

KAMLABEN RAGHUVIRSINH BHATT AND ANOTHER
Versus
STATE OF GUJARAT

==========

Appearance :
MR MHM SHAIKH for the Appellants
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/02/2007

ORAL JUDGMENT

1. The appellants – convicts in Sessions Case No.302 of 1999 for offence under Sections 306 and 498A read with Section 114 of the Indian Penal Code (“IPC”, for short) are before this Court.

The learned Additional City Sessions Judge, City Sessions Court No.21, Ahmedabad was pleased to convict

the appellants and award sentence of 5 years R.I., fine of Rs.2,000/- (each) and in default, 1 month's R.I. for offence under Section 306 read with Section 114 of IPC.

So far as offence under Section 498-A read with Section 114 of IPC is concerned, the learned Judge was pleased to award 1 year's R.I.

The learned Judge was pleased to order that both the sentences shall run concurrently.

2. The case of the prosecution is that deceased – Rekhaben was married to one Gurucharan Raghuvirsinh Bhatt, as per the customs of the caste about 3 years before the incident in question; that she was residing with her husband, mother-in-law, sister-in-law and brother-in-law after marriage; that she was blessed with female child out of the wedlock; that the accused – Kamlaben Raghuvirsinh Bhatt, mother-in-law of the deceased and Gurupad Raghuvirsinh Bhatt, younger brother of the husband of the deceased used to cause mantle harassment and physical torture to her in relation to demand of dowry.

As the deceased could not bear harassment and the torture at the hands of the accused, she committed suicide by consuming poison on 27.04.1999.

Bijaji Shivbax Bhatt, father of the deceased – complainant herein lodged complaint with the police against accused on 30.05.1999 with Gandhidham Police Station.

The matter was investigated and after collecting evidence against the accused, they were charge sheeted for the offence under Sections 498-A and 306 read with Section 114 of IPC before the learned Metropolitan Magistrate, Ahmedabad. The learned Metropolitan Magistrate, Ahmedabad committed the case to the Court of Sessions as the offence was exclusively triable by the Court of Sessions. The charge was framed on 09.01.2001, which is at Exh.1. The accused denied the charge levelled against them and therefore, they were tried.

3. The prosecution examined following witnesses to substantiate its case.

Sr. No.	**Name of the witness and relation**	**Exh.No.**
1.	Bijaji Shivbax – father of the deceased	7
2.	Kamalaben Bijaji – mother of the deceased	11
3.	Dr.Ankur Jayant Rana, who examined the deceased	20
4.	Babubhai Shivbax – brother of the deceased	22
5.	Dr.Jayantilal Virjibhai, who had performed the post-postmortem of the dead body of the deceased	25
6.	Mansukhbhai Dungarbhai Lathia – Police Inspector	30

Sr. No.	Name of the witness and relation	Exh.No.
7.	Jivkubhai Kathadbhai Vank – Police Inspector	34

The prosecution relied upon the following documentary evidence:

Sr. No.	Description of the document	Exh.No.
1.	Complaint filed by Bijaji Shivbax	8
2.	Inquest Panchnama of the dead body of the deceased	27
3.	Panchnama of scene of offence	28
4.	Panchnama pertaining to recovery of the wearing apparels of the deceased and medical certificate	29
5.	Postmortem report of the deceased	26
6.	Outward entry pertaining to sending of Muddamal to F.S.L.	32
7.	F.S.L. Receipt	33
8.	F.S.L. Receipt	31

4. Mr.Shaikh, learned Advocate for the appellants submitted that in the present case, there was inordinate delay in filing the complaint. He submitted that the alleged incident of consuming poison took place on 27.04.1999, Rekhaben died on 30.04.1999 and the complaint was filed on 30.05.1999 – Exh.8

5. Father of the deceased – Bijaji Shivbax – complainant is examined as P.W.No.1 at Exh.7. He has deposed that the deceased was married 3 years before the

incident with one Gurucharan Raghuvir; that she was blessed with female child; that she was residing at Bapunagar (Ahmedabad City) with her husband, mother-in-law, sister-in-law and brother-in-law.

This witness has narrated few instances to bring home the case of the prosecution that the deceased was ill-treated, she was mentally harassed and physically tortured.

The deponent has stated that,'his son's marriage took place about 2 years before the incident. At that time, the deceased, her husband and her mother-in-law had come to attend the marriage'. He has stated that, 'as per the custom, whatever was required to be given to her daughter, was given'. At that time, mother-in-law of the deceased had told that, 'what these **baggers** can give', after saying so, she went away. The deponent has stated that, 'being the father of a daughter, he did not react to the same'. His daughter and son-in-law stayed back. He has stated that, 'when this particular incident was brought to the notice of his son-in-law, he said that, 'my mother is in habit of saying so, but you need not worry'.

The deponent has then described the present incident. He has stated that, 'on 27.04.1999, in-laws of

the deceased had telephoned to one Balmukund, staying at Gandhidham. He is relative of the in-laws of the deceased. Balmukund was informed that, 'Rekha – deceased is serious'. But when Balmukund inquired, he was told that, 'Rekha is not very serious'. He therefore, informed the deponent on the next day, i.e. on 28.04.1999, saying that yesterday, on 27.04.1999, there was a phone call from your son-in-law that, 'Rekha is serious'. The deponent along with his wife left for Ahmedabad by an S.T.Bus. They went to the place of their son-in-law. There, they met sister-in-law of the deceased – Parul. The mother-in-law of the deceased was also present. They both took them to 'Shardaben Hospital' and pointed out their daughter, who had died. The deponent then attended funeral of the daughter and came back to Gandhidham. He filed the complaint at Gandhidham Police Station on 30.05.1999.

6. The deponent has also deposed that, 'after the marriage of his son, after about 2 to 3 months, his daughter – Rekha had telephoned at KPT Office (Kandla Port Trust) and informed that my brother-in-law (younger brother of the husband of the deceased) – Gurupad Bhatt and mother-in-law – Kamlaben are taunting me by saying that you have brought very less dowry and are causing physical and mantle torture'. She also told the deponent

that, 'he shall not worry about the same'. To that, the deponent responded by saying that, if you are in trouble, we may come there'. The deceased told the deponent that, 'my husband is keeping me well and if you come, that might disturb him'. Therefore, the deponent did not go to Ahmedabad.

The deponent has next deposed that after the marriage of his daughter, when she was blessed with a female child, the deponent had gone to the place of his daughter with cloths and silver ornaments. At that time, mother-in-law and brother-in-law of the deceased threw the ornaments and behaved in a very indecent manner due to which, the deponent along with his wife had to come back to their home.

The deponent continues to depose that, 'when they inquired in the hospital as to what has happened, brother-in-law of the deceased took them out and told that she (deceased) has consumed poisonous substance and has died'. What follows is important. The deponent has stated that, 'he was told by brother-in-law of the deceased that, if you will file a police complaint in this regard, you will also meet with the same fate'. The deponent continues to state that, 'in view of such threat, they did not file any police complaint'. He also

states that, 'at the time of filing police complaint, he had produced a letter, which contained the material with regard to torture to the deceased.

7. Thus, it is clear from the deposition of P.W.No.1 – father of the deceased – complainant that the deceased had physical and mantle torture from the present appellants – accused and specific instances are quoted. The instances are though few in number, are grave enough to cause mantle harassment to a married girl.

At the time of marriage of her brother, her parents are addressed as, 'baggers' and her mother in-law leaves the place without allowing the marriage function to be over.

When the parents of the deceased went to her place on the occasion of birth of a female child, ornaments brought by them were thrown. Similarly, at the time of sad demise of their daughter, brother-in-law threatens the father of the deceased that if he will file any complaint in this regard, he will meet with the same fate.

8. The prosecution has also examined the mother of the deceased – Kamlaben Bijaji as P.W.No.2 at Exh.11. The mother of the deceased has supported the evidence of

P.W.No.1. She does say that the accused used to tell the deceased that her parents are baggers; that she was caused physical torture. She has deposed that even in her presence, the accused used to taunt the deceased; that when she used to go to her daughter's place to inquire about her wellbeing, the daughter was threatened in her presence and was subjected to physical torture.

P.W.No.2 – mother of the deceased has supported the evidence of P.W.No.2 – her hjusband with regard to the instance, which took place at the time of marriage of her son. She has narrated the instances of mantle harassment and physical torture to her daughter in paragraph Nos.5 and 6 of her deposition. She has also supported the fact of administering threat by brother-in-law of the deceased in paragraph No.9 of her deposition. The deponent has also corroborated the incident, which took place on their visit to the place of their daughter at the time of birth of a female child.

9. It is true that in the depositions of two witnesses, there are some discrepancies, but then these discrepancies are of the insignificant nature. When a same incident is narrated by two different persons, their mode and manner of description always very. The discrepancies are not material, which will render

evidence of these 2 witnesses untrustworthy.

10. The prosecution has examined the brother of the deceased – Babubhai Shivbax as P.W.No.4 at Exh.22. He too has deposed on the lines of P.W.Nos.1 and 2. The only difference between the deposition of this witness and other 2 witnesses is that, this contains some more details of mantle harassment and physical torture, viz. he has deposed in paragraph No.3 of his deposition that, after marriage, his sister was not allowed by her in-laws to come to her parental home; that she had visited her parental home only once or twice, at the time of Raxabandhan and at the time of marriage of the deponent. He has deposed that, 'in a marriage, one of the customs is that when the brother, after getting married is entering the house with his bride, his sister stops the brother and asks for a gift. At that time, in-laws of his sister told her that she should ask for, 'Maruti Car' or 'Hero Honda' (motorcycle). He has also deposed that as his parents were not in such a position, they refused to give the same and thereafter, his sister, her mother-in-law along with female child had returned to Ahmedabad. The deponent has deposed that at the time of his marriage ear-rings to his sister and a gold pendent to her husband was given. Thereafter, he is not able to see his sister.

11. Mr.Shaikh, learned Advocate for the appellants

submitted that these instances are not sufficient to hold that an offence under Section 498-A of IPC is committed. He submitted that there is no material on the record of the case to hold that an offence under Section 306 of IPC is committed.

He emphasized the discrepancies between the evidence of these 3 witnesses. He also emphasized the fact that there was delay in filing the complaint and that before filing the complaint, the parents of the deceased, i.e. P.W.Nos.1 and 2 had consulted an Advocate.

The submissions of Mr.Shaikh are without any merit, as discussed hereinabove, the discrepancies are bound to be there. The only thing which is required to be taken into consideration is, as to whether the discrepancies are such, which will render the evidence untrustworthy. Otherwise, if the discrepancies are of minor nature by which the 'common thread' of the case of the prosecution remains unbroken, then the depositions of these witnesses are to be relied upon.

Taking into consideration the evidence of these 3 witnesses, it leaves no doubt that the common thread of the case of the prosecution remains unbroken and the discrepancies are of minor nature, which do not render the evidence of any of the witnesses untrustworthy.

So far as offence under Section 498-A of IPC is concerned, on appreciation of the evidence of these 3 witnesses, there remains hardly any scope to hold that offence under Section 498-A of IPC is not committed.

12. Learned Advocate Mr.Shaikh submitted that the ingredients of Section 306 of IPC are not fulfilled. In support of his submission, he relied upon a decision of the Hon'ble the Apex Court in the matter of **GURUCHARAN KUMAR AND ANOTHER VS. STATE OF RAJASTHAN**, reported in 2003 Supreme Court Cases (Cri) 675.

There, the Hon'ble the Apex Court on facts of that case, was pleased to hold that:

> ..... The only indication, if at all, is about her finding it difficult to adjust in the new surroundings for which she found herself guilty for entertaining such feelings. She has referred to the freedom that she enjoyed in her parental home but now feels suppressed because she cannot do all that she used to do in her parental home. Further, the fact that she was keen to get her brother-in-law married and was requesting her sister to find a good match, it at all, is indicative of the fat that she found her husband, father-in-law, mother-in-law and other members of the family to be good-natured persons, and was therefore keen to get her brother-in-law married.
>
> That apart, the suicide note also does not contain

> any statement which can be used against the accused, as there is nothing in the suicide note which may even remotely suggest that *G* was ending her life because of the maltreatment meted out to her by members of her matrimonial family. In fact the note says that no one was responsible for what she was doing, and that what she was doing was entirely of her own will."

In the case before the Hon'ble the Apex Court, the marriage life was of 2½ months and from the facts, it appears that the deceased was not able to adjust herself in her new role, whereas in the case on hand, the marriage life is more than 3 years, the deceased was already blessed with a female child and still, due to mantle harassment and physical torture, she was driven to commit suicide. This is clear not only from the aforesaid oral evidence but is also clear from the documentary evidence, viz. Exhs.14, 15 and 16 – the 3 letters.

A conjoint reading of these 3 letters leaves no doubt that it was only the present appellants – accused, who were meeting out the mantle harassment and physical torture to the deceased.

13. Learned Advocate Mr.Shaikh submitted about non-recovery of these letters by the police during the investigation and submitted that therefore, the reliance

placed by the learned Additional Sessions Judge on these letters is uncalled for.

14. This aspect is considered by the learned Additional Sessions Judge. Mr.H.L.Jani, learned Additional Public Prosecutor appearing for the opponent - State invited attention of the Court to paragraph No.8 of the judgment and order of the learned Additional Sessions Judge, wherein he has discussed these 3 letters. He has discussed the aspect of handwriting of these letters. These letters were produced at the time of deposition of P.W.No.2 – mother of the deceased. For ready perusal, paragraph No.8 of the judgment and order is reproduced, which will show that in all possible depth, the learned Additional Sessions Judge has appreciated these letters and has found them reliable on the touchstone of credibility:

> “The handwriting of the said letters is proved to be that of the deceased by the oral testimony of Babubhai, the real brother of the deceased and the signature of the letters are testified to be that of the deceased. It is quite natural that a brother can identify the handwriting of his sister. These two letters were in fact not mailed but were kept in the bag of the deceased. After death of the deceased, i.e. after a month, when the bag of the deceased was opened, these two letters were found. Significantly, the said letters were found from the

bag when the deceased was at her parents' place. Her not mailing these letters might be the apprehension that it might cause shock and grief to her parents and that reason might have prevented the deceased from mailing the letters and were kept in her bag, may be with an intention that the same may not become a public issue so that it may not disturb a newly started married life. Be it as it may, the fact remains that the deceased was subjected to harassment and mental torture given by the accused with an intent to get more dowry from her parents which is apparent from these letters. And this torture, ultimately proved unbearable for the deceased and it crossed the tolerance point of the deceased, driving her to consume poison to end up her life. Exh.14, the letter of the deceased reveals that her brother-in-law (Diyar) used to taunt the deceased and instances of causing torture by her Diyar were quite frequent and he even used to quarrel with her parents & brothers and insult and beating also. In short, these quarrels were in connection with the demand of dowry by her in-laws, i.e. mother-in-law and brother-in-law. It also appears that her brother-in-law had beaten her mother and assaulted her brother with open sward. The deceased had signed below the said letters and the same has been identified by her brother Babubhai. While, in her another letter Exh.15, the deceased has stated about her miserable life and precarious condition. It is also stated that only death is being awaited by her and it is described as the only remedy to get rid of the given tortuous life. It is also stated therein that she would not

> be available in bear future, which means that she would end her life up within a short time. Her signature below this letter is also identified by her brother Babubhai in his oral testimony. In letter Exh.16, it is stated that now the death would be the only rescuer. In view of the said letters, it is thus submitted that the accused subjected the deceased to torture and harassment and hence she thought of ending her life up by means of consumption of poison. Further, the doctor has also found aluminum phosphate from the vomit, which was caused to be done by the doctor while washing the stomach. No doubt, the contents of vomit was not kept in laboratory for the purpose of its taste (sic-test), but merely because of 'this' omission, it cannot be said that the deceased had not consumed poison."

15. Learned Advocate Mr.Shaikh also tried to assail the conviction and sentence by submitting that there was delay in filing the complaint and according to him, on the ground of inordinate delay in filing the complaint, it was required to be discarded.

This particular aspect is dealt with by the learned Additional Sessions Judge in paragraph No.9 of his judgment and order, wherein the learned Additional Sessions Judge has observed that, 'there is no time limit prescribed under the Act for lodging the complaint after occurrence of the incident'.

It is required to be noted here that parents, aghast of the incident visited the place of their daughter and there they were threatened by present appellant No.2, who in the past had also misbehaved with P.W.Nos.1 and 2. Hence, they returned to their place without taking any action, after attending funeral of their daughter. It is only when there is some soothing of the injuries sustained by them on account of sad demise of their daughter, they contacted an Advocate and when it was advised that a complaint can be filed even at that stage, they filed the complaint. Therefore, delay, if any, cannot be said to be fatal, more particularly when there is no allegation of false implication.

In the present case, though the daughter of the complainant was residing with her husband, mother-in-law, brother-in-law and sister-in-law, the complaint is filed only against two, i.e. mother-in-law and brother-in-law. It is significant that no complaint is filed against sister-in-law and the husband of the deceased. At one stage, the complainant – father and the mother of the deceased had deposed that soon after the marriage, sister-in-law of the deceased was also not treating her well. But then, what is continued was the mantle harassment and physical torture by the present appellants – accused only and therefore, the complaint was filed

against them. This is one factor, which must go in favour of the complainant. Otherwise, if he was to file the complaint out of vengeance, he could have roped in all the 4 persons of the in-laws family of the deceased.

16. Learned Advocate Mr.Shaikh asserted that on 30.04.1999, the day when the daughter of the complainant died at the hospital, his statement was recorded by Assistant Commissioner of Police, Shri Malvi and in that statement, not a word about the so called torture by in-laws is found.

As discussed hereinabove, in the hospital when the complainant and his wife reached, they were under shock, besides, at that very time, a threat was administered by appellant No.2 herein, which made them further nonreactive to the happenings in the surrounding and therefore, after attending the funeral of their daughter, they returned to their place – Gandhidham without filing any complaint or making any grievance. That being so, non-mention about torture in the statement is insignificant.

17. Learned Advocate Mr.Shaikh invited attention of the Court to deposition of P.W.No.3 – doctor at Exh.20, who gave treatment to the deceased. The learned Advocate submitted that at one place, this doctor has stated that

the poison, i.e. aluminum phosphate is used for preserving grains, vegetables, etc. He has also deposed in paragraph No.3 of his deposition (cross-examination) that:

> “.....it is true that aluminum phosphate is found in vegetables, fruits, milk, eggs and seafood many a times when the food is cooked in aluminum vessel. It can be even in the cooked food. In our second M.B.B.S. Study, in subject, 'Medical Toxicology', it is studied that many a times in the case of food poisoning, the person becomes semi-conscious. In the book of Dr.Modi – 'Medical and Toxicology', on page No.133, it is stated that in lemon water, in the milk, sodium chloride is found in large quantity. The book, which is shown to me was published in the year 1988.....”.

Learned Advocate Mr.Shaikh submitted that therefore, this could be a case of food poisoning and once there is possibility of food poisoning, the question of the deceased committing suicide on account of mantle harassment and physical torture is ruled out and the appellants must be set at liberty, quashing the conviction recorded against them.

The submission is far fetched. There is no material on the record. On the contrary, in F.S.L. report at Exh.31, 'Result of chemical analysis' is mentioned. It is stated that in 'Namuna' Mark Nos.1 and 2, presence of

chemical poison of non-carbonic type – aluminum phosphate could be detected.

Similarly, in 'Namuna' Mark No.3, preservative – sodium chloride could be detected, whereas in 'Namuna' Mark Nos.A, B, and C, no chemical poison could be detected. Mark Nos.A, B and C are the cloths, which the deceased was wearing on the day of the incident, whereas Mark Nos.1 and 2 are the viscera, which was taken from the stomach, small intestine. Mark No.2 contains 50 gms. viscera, which contains pieces of liver, spleen and kidney.

18. From the aforesaid, it is clear that it was a case of suicide by consuming poisonous substance and the deceased was driven to that due to mantle harassment and physical torture by the present appellants – accused.

19. In view of the aforesaid discussion, this Court finds no substance in the appeal. Hence, the appeal is dismissed. Bail bonds are cancelled.

(RAVI R.TRIPATHI, J.)

*Shitole